



## INTERIOR BOARD OF INDIAN APPEALS

Tonia Marie Cannady Wiman Holcombe v. Portland Area Director,  
Bureau of Indian Affairs

9 IBIA 192 (03/09/1982)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

TONIA MARIE CANNADY WIMAN HOLCOMBE  
v.  
PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 81-31-A

Decided March 9, 1982

Appeal from decision of Portland Area Director determining distribution of decedent's share of judgment funds awarded to Klamath Tribe.

Affirmed.

1. Indian Probate: Klamath Tribe--Indian Tribes: Judgment Funds

Under 25 U.S.C. § 565a (1976) the share of judgment funds of a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Where transcripts of testimony by appellant and her mother appearing in the record on appeal indicate that appellant has little prospect for ultimate success in the event that an evidentiary hearing which she seeks were to be held by the Department to inquire into her claimed relationship to decedent, the decision of the Area Director which correctly states the law to be applied to the facts shown of record will be affirmed.

APPEARANCES: Neal G. Buchanan, Esq., for appellant; Richard B. Thierolf, Jr., Esq., for appellee.

## OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appellant Tonia Holcombe seeks relief from a decision by the Portland Area Director issued on February 11, 1981, which found that she was not an heir of decedent Simeon Buchanan Riddle, an enrolled member of the Klamath Tribe of Indians. The decision appealed from was made under delegation from the Secretary of the Interior pursuant to the Act of October 1, 1965, 25 U.S.C. § 565a (1976), which requires that the Secretary determine the

heirs of deceased Klamath members entitled to share in judgment funds awarded the tribe. Appellant claims to be the illegitimate daughter of decedent; were she to prevail, she would be the sole heir entitled to receive approximately \$13,000 from the decedent's share of the tribal fund. Appellant seeks an evidentiary hearing by the Department to determine heirs of the decedent, and in support of her claim furnishes the transcript of proceedings held in decedent's estate in the Klamath County, Oregon, Circuit Court.

Appellee Christine Allen, decedent's sister, on behalf of herself and her sisters and brother, contends that the findings concerning inheritance made by the Oregon court, which found that appellee and her brother and sisters and the heirs of a deceased sister were decedent's surviving heirs, were correct and should be adopted by the Department. Appellee also contends that the state court's determination is binding upon the Department as a matter of law. This second contention is incorrect, as appellant points out. Under 25 U.S.C. § 565a (1976) the share of judgment funds due to a deceased enrolled member of the Klamath Tribe passes by operation of Federal law to the decedent's heirs as determined by the Secretary. Sherman v. Portland Area Director, 9 IBIA 25, 88 I.D. 619 (1981); Wright v. Portland Area Director, 9 IBIA 147 (1982).

In support of appellee's contention that the state court correctly determined that appellant was not an heir of decedent, she has supplied the transcript of deposition of appellant's mother, Geraldine Cannady, who was examined under oath by counsel for both parties on August 15, 1980, concerning the paternity of appellant. Mrs. Cannady's deposition establishes that appellant was born during her marriage to Wallace Cannady at a time while Cannady still had access to her and while she was still living with Cannady. When appellant was born, Mrs. Cannady gave Cannady's name as the father of the child for purposes of birth registration with the State of Oregon. At the time of conception, it appears that decedent and another man besides her husband may also have had sexual access to Mrs. Cannady. Decedent visited her in the hospital during her confinement with appellant. Her testimony makes clear that any of the three men might have been appellant's father, but that Cannady was her husband at the time of conception and also at the time of appellant's birth.

Under the circumstances, which are not contradicted by any evidence offered to the circuit court at the earlier probate proceeding, there appears little likelihood appellant will be able to change the result reached by the Area Director in his decision to distribute the judgment funds in this matter to the sisters and brother and heirs of the deceased sister of decedent. In his memorandum forwarding this matter to the Commissioner of Indian Affairs for review on appeal, the Area Director noted that:

From our examination of this case, Mr. Buchanan's appeal seems to rest on his contention that this office's determination of heirs should not be based upon a state court decision.

\* \* \* \* \*

We agree with Mr. Buchanan that a state court determination in paying out these funds is not final. However, because there is

no federal law of descent and distribution the Secretary of the Interior and those to whom his authority has been delegated are generally guided by a state Court's determination of the heirs of a deceased member of the Klamath Tribe. Consequently, since neither this office nor the Office of the Regional Solicitor have found any evidence that Tonia Marie Cannady Wiman Holcombe should be included as one of Simeon Buchanan Riddle's heirs, we recommend that the appeal be denied.

Clearly, he applied correct reasoning to the matter before him to be decided. Appellant's claim to be the illegitimate daughter of decedent is not supported by the circumstances made to appear of record. There appears little probability that a further hearing in this matter would produce a successful result for her.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 11, 1981, decision of the Portland Area Director is affirmed.

This decision is final for the Department.

//original signed

Franklin D. Arness  
Administrative Judge

We concur:

//original signed

Wm. Philip Horton  
Chief Administrative Judge

//original signed

Jerry Muskrat  
Administrative Judge